

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

WP(C).No. 31360 of 2006(G)

PETITIONER:

**KUMARI KANMANI GREGORY,
D/O.OUSEPH GREGORY,
PULICKAL VEEDU, PUNNAPRA SOUTH PANCHAYATH,
PUNNAPRA P.O., ALAPPUZHA-4.**

**BY ADV. SRI.K.K.SATHEESH
SRI.SIBI KARUN**

RESPONDENTS:

**1. UNION OF INDIA,
REP. BY THE UNDER SECRETARY,
MINISTRY OF HOME AFFAIRS, FREEDOM FIGHTER'S
DIVISION, NEW DELHI-110 003.**

**2. STATE OF KERALA,
REP. BY THE PRINCIPAL SECRETARY,
GENERAL ADMINISTRATION (FFP.A) DEPT.,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.**

**BY ADV. SRI.P.R.RAMACHANDRA MENON, ADDL.CGSC
BY GOVERNMENT PLEADER SRI.V.T.K.MOHANAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 10/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

W.P.(C) NO.31360/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE EXTRACT OF THE CONVICT REGISTER OF CENTRAL PRISON, TRIVANDRUM ISSUED BY THE SUPDT. IN RESPECT OF PETITIONER'S LATE FATHER.

EXT.P2:- COPY OF THE APPLICATION DT. 19.7.01 SUBMITTED BY THE PETITIONER TO THE RESPONDENT.

EXT.P3:- COPY OF THE LETTER NO.119/28/01/FF//SZ DT. 27.7.01 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT.P4:- COPY OF THE JUDGMENT DT. 26.5.06 PASSED BY THIS HONOURABLE COURT IN WP(C) NO.35992/04.

EXT.P5:- COPY OF THE COMMUNICATION NO.52/CC/K/123/04/FF(SZ) DT. 29.9.06 ISSUED BYU THE 1ST RESPONDENT TO THE PETITIONER.

EXT.P6:- COPY OF THE LETTER NO.31089/FFP.A2/99/GAD DT. 11.8.99 ISSUED BY THE 2ND RESPONDENT TO THE 1ST RESPONDENT.

EXT.P7:- COPY OF THE REPRESENTATION DT. 20.10.06 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT.

EXT.P8:- COPY OF THE LETTER NO.104120/FFP/A1/01 /GAD DT. 29.9.03 ISSUED BY THE 2ND RESPONDENT TO THE 1ST RESPONDENT.

EXT.P9:- COPY OF THE LETTER NO.6/1/97/FF(P) DT. 7.4.03 ISSUED BY THE 1ST RESPONDENT TO THE 2ND RESPONDENT.

EXT.P10:- COPY OF THE LETTER NO.H3-21909/02 DT. 11.6.02 AND ALSO THE PROFROMA REPORT OF THE DISTRICT COLLECTOR, ALAPPUZHA.

EXT.P11:- COPY OF THE LETTER NO.11663/FFP.05/GAD DT. 11.7.05 ISSUED BY THE 2ND RESPONDENT TO THE 1ST RESPONDENT.

EXT.P12:- COPY OF THE LETTER NO.12083/FFP A2/2005/GAD DT. 5.1.07 ISSUED BY THE 2ND RESPONDENT TO THE 1ST RESPONDENT.

/TRUE COPY/

P.A. TO JUDGE

tss

T.R.RAMACHANDRAN NAIR, J.

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WP(C).No.31360 of 2006-G.
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Dated this the 10th day of August, 2007.

J U D G M E N T

The petitioner herein is the unmarried daughter of veteran freedom fighter Sri.Ouseph Gregory who had actively participated in the Punnapra-Vayalar movement during the freedom struggle. It is stated that he was the first accused in the Sessions Case No.11/1124 ME which was charged against various accused (27 in number) in connection with the above struggle. He was convicted and sentenced to undergo rigorous imprisonment for a total period of five years and one month and Rs.500/- towards fine as per the judgment of the Sessions Court, Alappuzh. He had undergone imprisonment in the Central Prison, Thiruvananthapuram for the period from 26.4.1125 ME to 13.3.1954 till he was released as per recommendation of the Advisory Board dated 12.3.1954.

2. The late father of the petitioner was the recipient of 'Thamrapatra' and he was also granted the Kerala Freedom Fighter's Pension with effect from 1.4.1971. When he died on 12.12.1992 the mother of the petitioner Smt.Victoria was granted the benefit of dependent family pension under the said pension scheme. Subsequent to her death on 9.2.2000

the petitioner is getting the benefit of dependent family pension under the said pension scheme as per the proceedings of the District Collector, Alappuzha vide order No.14748/2000 dated 23.10.2000. The grievance raised by the petitioner is against the refusal by the Central Government to grant pension under the Swatantrata Sainik Samman Pension evidenced by Ext.P5 order, inspite of the fact that necessary records were produced and the application was recommended by the State Government also.

3. It may also be mentioned herein that the petitioner's mother had submitted an application for the same relief on 18.3.1998 and the Government had recommended the same for the grant of SSS pension as per letter No.31089/FFP.A2/99/GAD dated 11.8.1999 (Ext.P6). She died on 9.2.2000. Ext.P2 is the application submitted by the petitioner for grant of pension. Ext.P1 is the true extract of the Convict Register of Central Prison, Thiruvananthapuram. All the details regarding the number of the case, date of conviction and other details are clearly stated in Ext.P1. As per Ext.P3 she was informed by the Central Government that further action in the matter will be taken on the basis of the report of the State Government. When further delay occurred she approached this Court by filing WP(C). No.35992/2004 wherein by Ext.P4 judgment this Court directed the first respondent to consider and dispose of the application in accordance with the

recommendation of the second respondent. It is thereafter Ext.P5 has been passed.

4. In Ext.P5 the first reason stated is that, the period of suffering is during 'post independence period' and, the second one is that there is no mention in the proceedings of the Court of Sessions saying that the sentence was in connection with the Punnapra Vayalar Struggle. It is further stated that the State Government has not mentioned in the letter dated 11.8.1999 that the claimed imprisonment suffering was in connection with the Punnapra Vayalar Struggle. Lastly it is stated that the recommendation of the State Government is not binding on the Central Government. In para.8 of the order it is made clear that, 'if the State Government categorically and satisfactorily reports that your late fathers claimed imprisonment suffering was in connection with the National Freedom Struggle, the claim will be appropriately re-examined as per rules and under law'.

5. Attacking the above order, the learned counsel for the petitioner submits that the reasons stated are totally unsupportable and that they are not germane to the facts proved and evident from the various documents including Exts.P1, P2, P6 to P9 produced in the writ petition and Ext.P10 to P12 produced along with the reply-affidavit. Therefore, if the conclusions arrived at in Ext.P5 are as a result of non-application of mind and are based

on errors of fact, this Court will be justified in setting aside the same.

6. The first reason stated is that the period of jail suffering from 13.12.1947 to 13.3.1954 in respect of the late father of the petitioner pertains to post independence period and therefore not logically related to the National Freedom Struggle. The learned counsel for the petitioner invited my attention to Ext.P9 which is issued by the Government of India to the State Government granting recognition of six regional movements taken place in Kerala during the freedom struggle for the purpose of grant of pension under the SSS Pension Scheme. It is stated categorically therein that, 'therefore the cases of freedom fighters of Punnapra-Vayalar struggle would be covered under the aforesaid Scheme even if imprisonment period of freedom fighters had extended beyond independence. In other words, the condition of "imprisonment of six months in the main land jails before independence" would not apply in case of Punnapra-Vayalar struggle being a movement for merger of erstwhile Princely State and even if the entire period of claimed suffering was after independence, it will be covered under the Scheme.' Therefore, obviously the case of the petitioner's father is covered by Ext.P9 and merely because the imprisonment was after the independence it cannot be held that the petitioner was not eligible for grant of pension. Therefore, the first reason stated in Ext.P5 is totally erroneous and without any application

of mind.

7. The second reason stated is that, there is no indication in the copy of the proceedings in the Court of the Sessions Judge that SC.11/1124 is in connection with the Punnapra-Vayalar struggle. This finding is also erroneous for more reasons than one. Ext.P6 is the letter recommending the application for pension of the late mother of the petitioner dated 11.8.1999 forwarded by the State Government to the first respondent. Therein it is clearly stated that her late husband Sri.Ouseph Gregory had participated in the Punnapra-Vayalar struggle. Reference is made to the extract of the convict register of co-prisoner (Ext.P1 herein). A proforma report of the District Collector is also seen forwarded along with Ext.P6 with due recommendation for SSS Pension. In Ext.P7 sent by the petitioner to the first respondent, reference No.4 is this letter. Apart from that enclosure No.1 forwarded along with Ext.P7 is the letter dated 29.9.2006 issued by the Principal Secretary to the State Government, GAD addressed to the Government of India. A copy of the letter has been produced by the petitioner as Ext.P8 herein also. The above letter is in respect of application for pension by the widow of another accused namely, Sri.V.S.Devassia who was the 27th accused in SC.No.11/1124. It is clearly stated therein that SC.No.11/1124 is in connection with Punnapra-Vayalar struggle. Therefore,

there could not have been any doubt in regard to the fact that SC.No.11/1124 is in respect of Punnapra-Vayalar struggle. A reference to Exts.P10 and P11 will also be advantageous in connection with this issue. Ext.P10 is the letter recommending the application of the petitioner for SSS pension. The proforma along with Ext.P10 is Ext.P10(2). In Col.5, 'name of freedom struggle' is Punnapra-Vayalar; Col.6, 'Case number in which the freedom fighter has suffered imprisonment undergone underground sufferings', P.E.5/122(SC 11/1124); Col.14 will show that the applicant's late father Sri.Ouseph Gregory was a Thamrapatra holder. In evidence of the sentence undergone the details have been given in Col.8, ie., true extract of the convict register of Central Prison, Thiruvananthapuram (Ext.P1 herein). Therefore, it is surprising to note that in spite of the same, in Ext.P5, it is stated that there is no evidence to show that SC.11/1124 is in respect of Punnapra-Vayalar struggle. When the State Government has clearly stated that SC.11/1124 is in respect of Punnapra-Vayalar struggle the same ought to have been accepted since the convict register and other details were before the first respondent. In Ext.P11 which is the forwarding letter sent by the State Government to the Central Government duly recommending the case of the petitioner for SSS Pension, reference 2 is the communication dated 11.8.1999 (Ext.P6). As already mentioned above, in Ext.P6 it has been clearly reported

by the State Government to the Central Government that the applicant had submitted application for SSS Pension of her late husband Sri.Ouseph having participated in the Punnapra-Vayalar struggle. The petitioner, along with Ext.P7 representation has forwarded Ext.P6 also as clear from reference (4) therein. Therefore, the finding in Ext.P5 that as regards SC.No.11/1124 there is no mention that the petitioner's late father suffered under Punnapra-Vayalar struggle is clearly erroneous and unsustainable, it amounts to a clear error apparent on the face of the records itself. Further, in fact, the Government of India had also mentioned in para.5(ii) that the conviction and sentence are under different sections of the TDC. The learned counsel for the petitioner brought to my notice the judgment of the Sessions Court in SC.11/1124. The first accused is Sri.Ouseph Gregory, Pulickal Veedu, Vattathil, Vadackal Ward, Alappuzha who is the late father of the petitioner herein. The learned counsel also submits that all the other accused have been found eligible for grant of pension under the State and Central Governments Schemes. Therefore, the observation in para.5(ii) that the conviction and sentence are not in respect of Punnapra-Vayalar struggle is not correct.

8. The other reasons stated in para.5(iii) of Ext.P5 that the recommendation of the State Government is not binding on the authority and that the State Government has not mentioned in Ext.P6 that the struggle was

in respect of Punnapra-Vayalar is also not acceptable. May be that, the Central Government can consider the issue irrespective of the recommendation of the State Government. But when a person has produced all the records relating to the suffering which complies with the scheme, the Central Government cannot ignore the clear evidence and reject the application for flimsy reasons. As far as the recommendation of the State Government is concerned, in this case that SC.No.11/1124 is one relating to the Punnapra-Vayalar Struggle is a fact within the knowledge of the State Government especially in the light of the judgment in SC.No.11/1124. Therefore, as far as that part of the recommendation is concerned there cannot have been any rejection at all. It is, therefore, is a case where the claim has been rejected on flimsy and technical reasons. The learned counsel for the petitioner also brought to my notice Ext.P12 a further recommendation by the State Government to the Central Government producing all the records and communications for further action. The same amounts to a clarification of all what is stated in Ext.P5.

9. In the counter-affidavit filed by the Central Government it is stated that the period of suffering in respect of petitioner's father is post independence period and therefore it cannot logically relate to the National Freedom Struggle. Plainly the stand is correct in the light of Ext.P9 issued by

the Central Government clarifying that as far as Punnapra-Vayalar Struggle is concerned the sufferings after independence also will enable the claimant for grant of pension. Then the other defence stated is that in the proceedings of the court of Session, Alappuzha the case No.11/1124, there is no mention that the sentence was in connection with Punnapra-Vayalar Struggle. It is beyond comprehension as to how the Sessions Judge could have stated that the case before him was in respect of Punnapra-Vayalar Struggle as the case was registered prior to the independence. The original case number is P.E.5/122 of the Divisional First Class Magistrate Court, Alappuzha. It is in these circumstances the recommendation letter of the State Government is significant wherein it has been clearly stated (as noted already by me) that SC.11/1124 is in respect of Punnapra-Vayalar struggle. Therefore the other contentions raised in the counter-affidavit are also without any merit. In view of the dictum laid down by the Hon'ble Supreme Court in *Cholan Roadways Ltd. v. G.Thirugnanasambandam* (2005(3) SCC 241) that, "Error of fact can also be subject matter of judicial review", I find that Ext.P5 cannot be sustained at all.

10. The applicant has, therefore, established her eligibility for grant of pension. It is declared so. Ext.P5 is, therefore, quashed and the first respondent is directed to pass consequential orders granting pension at any

rate from the date of receipt of the application dated 18.3.1998 submitted by the petitioner. The learned counsel for the petitioner submits that since the application of the mother was there, the arrears of pension that could have been paid to the mother would also be liable to be paid to the petitioner. This aspect will also be considered by the first respondent. Appropriate orders will be passed within two months from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-